

Message Text

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TO AMEMBASSY NAIROBI NIACT IMMEDIATE

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AMEMBASSY PARIS

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E.O. 11652 GDS

TAGS: EFIN, GV

SUBJ: OLIN/FRIGUIA(GUINEA)

FOR:OPIC PRESIDENT MARSHALL T MAYS

REF: CONAKRY 481

SUMMARY: GOVT OF GUINEA IS DEMANDING CHANGE IN "RULE OF ONE-THIRD" WHEREBY FRIGUIA TURNS OVER TO BANK OF GUINEA APPROXIMATELY ONE-THIRD PROCEEDS FROM ALUMINA SALES TO COVER GRIGUIA LOCAL COSTS IN GUINEA. END SUMMARY.

1. OLIN REPS MET WITH OPIC APRIL 3 AND ARE SOURCE FOR MUCH OF FACTS OF THIS MESSAGE.

2. FRIA (NOW FRIGUIA) ORIGINALLY OWNED 100 PERCENT BY FOREIGN CONSORTIUM OF OLIN, PECHINEY, BRITISH ALUMINIUM, ALUMINIUM SUISSE, AND GERMAN FIRM VAW. AS RESULT OF 1973 REORGANIZATION, OWNED 49 PERCENT BY GOG, 51 PERCENT BY FRIALCO, (CAYMAN ISLAND CORP).

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OWNED 100 PERCENT BY CONSORTIUM). ACCORDING OLIN, AFTER GUINEAN

INDEPENDENCE GOG CONTROLLED ALL FRIA FOREIGN EXCHANGE ("FOREX") PROCEEDS AND DID NOT RPT NOT MAKE SUFFICIENT FOREX AVAILABLE TO PERMIT FRIA TO PAY FOR ALL NECESSRY FOREX COSTS (DEBT SERVICE AND IMPORTS). AFTER MUCH DISCUSSION GOG PRESIDENT SEKOU TOURE AGREED TO RULE OF ONE-THIRD ("RULE") IN LETTER DATED DEC 20, 1961. GOG SUBSEQUENTLY REAFFIRMED RULE IN OCT 8, 1968 EXPANSION PROTOCOL AND IN FEBRURY 10, 1973 AMENDMENT TO LONG TERM AGREEMENT, WHICH WAS PUBLISHED IN JOURNAL OFFICIEL JULY 1, 1973.

3. THE RULE PROVIDES THAT THE AMOUNT OF FOREX TRANSFERRED TO BANK OF GUINEA SHALL BE EQUAL TO ONE-THIRD OF REFERENCE PRICE PER METRIC TON TIMES ANNUAL PRODUCTION. REFERENCE PRICE IN NOT RPT NOT RELATED TO COST NOR TO TRANSFER SELLING PRICE. PRESIDENT TOURE CONFUSED THIS POINT IN SPEECH THIS PAST MAR 15, WHEN HE SAID THAT RECENT INCREASE IN TRANSFER PRICE WOULD RESULT IN ADDITIONAL FOREX TO GUINEA UNDER RULE. IN FACT, GUINEA WILL NOT RPT NOT REALIZE ANY ADDITIONA INCOME UNDER RULE FROM RECENT INCREASE IN TRANSFER PRICE. REFERENCE PRICE VARIES INVERSELY WITH PRODUCTION, GOING DOWN AS PRODUCTION INCREASES. CURRENT REFERENCE PRICE IS \$63.50, AT 700,000 TONS/YEAR, SO BANK OF GUINEA RECEIVES APPROXIMATELY \$14.5 MILLION PER YEAR UNDER RULE. THESE PROCEEDS INSUFFICIENT TO COVER FRIGUIA LOCAL COSTS, ANNUAL SHORTFALL HAS AVERAGED ABOUT \$600,000, MADE UP FROM RESERVE OF LOCAL CURRENCY ACCUMULATED BY FRIA IN 1960-61. LONG TERM AGREEMENT GIVES FRIGUIA OPTION IN 1975 TO OPT FOR BOKE REGIME, " I.E., TO TURN OVER TO BANK OF GUINEA SUFFICIENT FOREX TO COVER FRIGUIA'S LOCAL COSTS.

4. UNDER 1973 AGREEMENTS FRIALCO BUYS 600,000 TONS ALUMINA ANNUALLY FROM FRIGUIA AT A COMMERCIAL (COST) TRANSFER PRICE (\$92.50/METRIC TON TODAY). EACH FRIALCO SHAREHOLDER (OLIN 38.5 PERCENT) BUYS ITS APPLICABLE PERCENTAGE FROM FRIALCO AT FRIALCO'S COST PLUS COST OF RUNNING FRIALCO. ALL PAYMENTS FROM FRIALCO TO FRIGUIA ARE TURNED OVER TO THE TRUSTEE, CREDIT SUISSE, WHICH PUTS THEM INTO VARIOUS ACCOUNTS (E.G., TO PAY LOAN INSTALLMENTS) AND MAKES TRANSFERS AS REQUIRED BY THE RULE. THE TOTAL PRICE MUST BE PAID AS ALUMINA IS DELIVERED INSTEAD OF EACH SHAREHOLDER RETAINING AMOUNTS NECESSARY TO PAY ITS OWN DEBT OBLIGATIONS.

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5. ACCORDING OLIN, AT FRIGUIA BOARD DIRECTORS MEETING THIS FEB 26-27 GOG PROPOSED THAT RULE BE ABOLISHED AND FRIGUIA TURN OVER ALL FOREX TO BANK OF GUINEA, WHICH WOULD ITSELF PROVIDE NECESSARY FOREX TO FRIGUIA. CONSORTIUM REPS TOLD GOG THAT FRIGUIA MANAGEMENT WAS WILLING TO STUDY WITH CENTRAL BANK POSSIBLE ALTERNATIVES, BUT COULD NOT RPT NOT ACCEPT CANCELLATION OF RULE PRIOR TO AGREEMENT ON ALTERNATIVE APPROACH BECASUE (A) RULE WAS PROVISION OF LONG TERM AGREEMENT RATIFIED BY

GUINEAN NATIONAL ASSEMBLY, AND (B) CONSORTIUM WOULD HAVE TO CONSUTL WITH OPIC SINCE OPIC INSURANCE ISSUED ON BASIS OF AGREEMENTS WHICH CONTAINED RULE. ON FEB 28 PRESIDENT TOURE TOLD PECHINEY REP THAT GOG PROPOSED ABOLITION OF RULE BECAUSE ITS EXISTANCE CAUSED SOVIETS TO PUSH FOR COMPARABLE TREATMENT. THERE HAS BEEN NO RPT NO FURTHER DISCUSSION OF RULE ABOLITION BETWEEN CONSORTIUM AND GOG SINCE FEB 28. ALTHOUGH CONSORTIUM REPS THOUGHT THEY HAD MADE PROGRESS IN CONVINCING TOURE OF CORRECTNESS OF THIER POSITION RE RULE AT FEB 28 MEETING, IN SPEECH ON MARCH 15 PRESIDENT TOURE SAID "WE HAVE REPUDIATED" (FRENCH "AVONS DENONCE") RULE.

6. OLIN'S CONCERN OVER ABOLITION DERIVES FROM ITS BELIEF THAT GOG WILL NOT RPT NOT SUPPLY FRIGUIA WITH SUFFICIENT FOREX IF RULE ABOLISHED AND ALL FOREX TURNED OVER TO BANK OF GUINEA. GUINEA HURTING FOR FOREX BECAUSE OF RISE IN PETROLEUM PRODUCTS AND CAUSTIC SODA PRICES. ALSO, GOG MAY WANT TO REVIEW LARGE FRIGUIA CONTRACTS FOR FUEL, CAUSTIC SODA, AND RICE. AT BOARD MEETING, FRIGUIA AGREED SUPPLY BANK OF GUINEA AN ADDITIONAL \$200,000 PER MONTH FOREX WHILE QUESTION OF RULE UNDER CONSIDERATION. OLIN BELIEVES CONSORTIUM HAS 3-4 MONTHS TO DECIDE ITS POSITIONR ON RULE AND POSSIBLE ALTERNATIVES. CONSORTIUM MEMBERS MEETING IN PARIS ON APR 9 TO DISCUSS QUESTION.

7. FRIGUIA, THOUGH PRESENTLY A NON-PROFIT COMPANY, CONSIDERING FEASIBILITY RAISING ALUMINA PRICES TO CONSORTIUM BEYOND WHAT MAY BE NECESSARY TO COVER INCREASED COSTS AND DEVALUATION. DETERMINATION OF FEASIBILITY AWAITING GOG ISSUANCE NEW DECREE ON TAXATION WHICH WILL BE UNIFORMLY APPLICABLE TO ALL FOREIGN OPERATIONS IN GUINEA.

8. OPIC INSURANCE PRESENTLY OUTSTANDING ON OLIN INVESTMENT IN FRIGUIA/FRIALCO AS FOLLOWS:
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INCONVERTIBILITY	EXPROPRIATION
CURRENT \$3,411,388	\$36,379,755
MAXIMUM 17,728,784	36,379,755

ALTHOUGH THIS COVERS BOTH EQUITY AND DEBT, CHANGEOVER TO FRIALCO HAS CONVERTED ALL BUT \$500,000 OF EQUITY INTO DEBT. AT LEAST \$20.8 MILLION OF DEBT NOT SUBJECT TO ACCELERATION FOR PURPOSES OF OPIC EXPROPRIATION INSURANCE.

9. UNDER OPIC CONTRACTS THERE IS SOME RISK THAT UNILATERAL RENUNCIATION BY GOG OF RULE COULD CONSTITUTE EXPROPRIATORY ACTION (AS PREVENTING INVESTOR FROM EXERCISING FUNDAMENTAL RIGHTS) IF RENUNCATION WAS NOT PURSUANT TO A BONA FIDE EXCHANGE CONTROL REGULATION AND IF DEFAULTS RESULTED. IT IS POSSIBLE BUT NOT CLEAR THAT

AMENDMENTS TO RULE IN MATERIAL RESPECT REQUIRE OPIC CONSENT.
CANCELLATION OF RULE WOULD CERTAINLY INCREASE OPIC'S RISK UNDER
COVERAGE A.

10. IF MAYS GOES TO GUINEA, BASSINE OF OLIN THINKS GOG MAY
RAISE QUESTION OF RULE WITH HIM. IF QUESTION OF RULE IS RAISED
WITH MAYS BY GOG, BUT NOT RPT NOT OTHERWISE, WE SUGGEST THAT MAYS
ACKNOWLEDGE SOME FAMILIARITY WITH IT; STATE THAT HE HAS HEARD
THAT GOG HAS EXPRESSED A DESIRE TO CHANGE THE RULE, AND THE
FOREIGN SHAREHOLDERS HAVE EXPRESSED WILLINGNESS TO STUDY QUESTION
AND DISCUSS ALTERNATIVES WITH THE GOG; EXPRESS HIS HOPE THAT
THE PARTIES WILL RESOLVE ANY DIFFERENCES BY NEGOTIATION AS
ENVISAGED IN FEB FRIGUIA BOARD MEETING; AND CONFIRM THAT UNI-
LATERAL ACTION BY EITHER PARTY, ESPECIALLY IF IT AFFECTED
IMPORTANT RIGHTS UNDER THE LONG-TERM AGREEMENT COVERING THE
PROJECT, WOULD NOT SEEM TO HELP NEGOTIATIONS AND WOULD, IF THE
ACTION WERE BY THE GOVT, PROBABLY LEAD OLIN TO EXAMINE WHAT
LEGAL RIGHTS IT HAD AGAINST OPIC BECAUSE OF SUCH ACTION.
BASSINE REMARKED THAT MAYS SHOULD NOTE THAT HE WOULD PROBABLY
BE ACCOMPANIED ON VISIT TO PROJECT SITE BY BAH, ASSISTANT TO
GRIGUIA GENERAL MANAGER, WHO ALTHOUGH FRIGUIA EMPLOYEE IS
GOG APPOINTEE.

11. OLIN STATES THAT IN VIEW OF RECENT TOURE "REPUDIATION"
OF RULE, AND UNCERTAIN SITUATION SURROUNDING SAME, ITS PREFERENCE
WOULD BE FOR MAYS NOT TO VISIT GUINEA AT THIS POINT IN TIME.
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IF MAYS WERE TO ANSWER ANY INQUIREIES BY GOG ALONG LINES SET
FORTH IN PARA 10 SUPRA, OLIN BELIEVES ITS POSITIN NEED OT BE
IMPAIRED. NEVETHELESS, OLIN REPS DISTINCTLY UNEASY ABOUT WHAT
THEY FEEL IS A VERY DELICATE SITUATION. RUSH

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